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COMMITTEE ON THE RIGHTS OF THE CHILD

Ninth session

SUMMARY RECORD OF THE 216th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 26 May 1995, at 10 a.m.

Chairperson: Ms. BELEMBAOGO

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 5) (continued)

Canada (continued) (CRC/C/11/Add.3; CRC/C.9/WP.1)

1. The CHAIRPERSON invited the Canadian delegation to answer the questions asked at the previous meeting.

2. Ms. McKENZIE (Canada) said she would reply to the questions on the age of consent for medical treatment, the age at which children could be imprisoned, and mobility rights and educational rights as mentioned in paragraph 58 of the report.

3. Various approaches had been taken by the provinces and territories on the age-limit for consent to medical treatment. In some provinces, there was a fixed age-limit, while in others there was none. In those situations, the authorities relied on a test of capacity. In still other provinces, such as New Brunswick, a combination of the two approaches was adopted. The age of consent was an area that had undergone developments in legislation. Her delegation would be interested in hearing the Committee's views on the appropriate approach to be taken.

4. In answer to the question about the number of 12-year-olds in detention facilities, she said her delegation had not been able to obtain statistics on the situation throughout the country; but she could state that in Quebec 12-year-olds had never been detained in correctional facilities.

5. The first part of section 6 of the Canadian Charter of Rights and Freedoms applied only to Canadian citizens. As was the common practice of States, it guaranteed the rights of citizens to enter, remain in and leave the country. All other persons were required to meet the conditions of specific legislation for entry into the country and for remaining in the country until they qualified for citizenship. It would not be possible for the authorities to carry out immigration and citizenship controls if the constitutional rights to enter and remain in the country were guaranteed to everyone. Other parts of section 6 guaranteed the right of citizens and permanent residents to move to, and take up residence in, different provinces and the right to earn a livelihood. Great care had been taken in the drafting of that section of the Charter to ensure that its application was restricted to citizens only where necessary.

6. Section 23 of the Charter, on minority-language educational rights of citizens, had been drafted in the context of the language situation in Quebec, where studies, reports and statistics had clearly demonstrated that the French language was in a vulnerable position. Among the factors responsible for that situation was the inflow of English-speaking immigrants. The Supreme Court of Canada had noted in the Ford vs. Quebec case that immigrants had been led to believe that it was prudent to join the anglophone community. It had been decided that the provisions of section 23 should be applied throughout Canada to avoid double standards.

7. Mr. DESLAURIERS (Canada), referring to the age of consent to medical care, described the situation from the standpoint of legislation and regulations applicable in Quebec. In addition to the information presented in the report and in the answers to the list of issues, he quoted articles 14 and 17 of the Civil Code, which had been adopted in 1991. Those articles dealt with the cases in which children could give their own consent and the cases in which the person exercising parental authority or the guardian would have to be informed. The members of the reform committee who had worked on the Civil Code had considered it unnecessary for the person exercising parental authority or the guardian to be informed in cases where the child did not require ongoing internment in a health or social service institution. He offered to provide additional information on relevant legislation if so requested.

8. He went on to cite articles 9 and 10 of the Health and Social Services Act, article 34 of the Civil Code of Quebec and articles 6 and 80 of the Protection of Young Persons Act, which guaranteed respect for the right of the child to be heard on matters pertaining to his medical care. Since 1988, a protocol of minimum guarantees for young people experiencing rehabilitation difficulties had been in force. A network of rehabilitation centres had been established with the aim of preventing and rectifying such disorders, taking into account the rules, standards and measures to be implemented. The right of the child to express his views had been considered in Quebec's Court of Appeal and the Committee on the Rights of the Child had received copies of texts of two rulings made by that Court. He hoped his statement would give the Committee an idea of the complexity and scope of legislation in Quebec

9. Ms. LAVIGNE (Canada), referring to Canadian official development assistance, said that her Government estimated that it spent Can$ 1 million daily on programmes affecting children in developing countries. Those programmes and projects had been evaluated by the Canadian Agency for International Development in the light of their efficiency, effectiveness and impact. As an example of a project implemented following ratification of the Convention, she referred to a fund established to assist children in difficult situations, and particularly child victims of war. Can$ 2 million had been allocated to that fund and had been administered by Canadian NGOs in partnership with organizations based in the countries concerned. The evaluation of that project had been published as a report.

10. A vaccination programme had been implemented in cooperation with the Canadian Association of Public Health and UNICEF. A large proportion of the Canadian Government's funds for children in developing countries were channelled through UNICEF. Canada and a group of other countries had participated in a major evaluation of UNICEF's programmes and policies.

11. A number of other programmes had been initiated and would be evaluated upon their conclusion. One such project, the establishment of a fund for the education of young women in Africa, had been announced at the World Summit for Social Development in Copenhagen.

12. Mrs. KARP said that after listening with interest to the responses to the question on the age of consent for medical treatment, she wished to express concern about the fact that the age-limit varied from one province to another.

She requested an explanation of those variations. She was also interested in knowing what procedures existed for children to resist committal to mental institutions and whether they could in fact resist such committal.

13. Mr. HAMMARBERG inquired about the major trends, in assistance to children abroad and mechanisms to evaluate the impact of such assistance. He noted that the Canadian Government had reduced its international assistance and wondered whether it was still able to maintain its past level of support to UNICEF. The Committee regretted that Canada had moved further away from the goal of 0.7 per cent of GNP for official development assistance. There had been no mention of an overall comprehensive review of how Canada's bilateral and multilateral assistance programmes affected children.

14. Mrs. SANTOS PAIS asked about the impact of the Convention on development assistance. She wondered whether the Convention had brought about any changes in the attitude of the Canadian Government, whether it had strengthened the Government's efforts in that area, and whether the Government had modified its objectives. Canada's policies on immigration and refugees were another major area of concern and interest to the Committee.

15. Ms. McKENZIE (Canada), replying to the question on differences in age-limits, said that it was difficult to be exact in the setting of age-limits. Variations existed between provinces for different purposes. She gave the example of the minimum-age requirement for the granting of a driving licence and said that, while that privilege was reserved for older teenagers, the exact age-limit varied from one province to another.

16. The CHAIRPERSON pointed out that the Committee was not concerned about the different age-limits for different categories of activities, but rather about differing age-limits for the same categories of activities and wanted to know why those differences existed.

17. Ms. McKENZIE (Canada) said there were no absolute standards for the setting of age-limits; variations accordingly occurred from province to province.

18. The CHAIRPERSON invited the Canadian delegation to continue with its replies to questions.

19. Mr. DESLAURIERS (Canada) said that, while he could not give precise information on the situation in the rest of Canada, in Quebec there was a substantial body of legislation to protect the rights of children whose parents wished them to be committed to psychiatric institutions. The protection of children was reflected in various measures which made it mandatory for persons making decisions on the admission of children to such institutions to take the child's views into account. Committal to an institution entailed a judicial process. A law for the protection of the mentally ill had been under review, but the fundamental rights of children and respect for a child's right to be heard had been guaranteed in order to avoid serious errors that could disrupt the life of the child.

20. Ms. LAVIGNE (Canada) reminded the Committee that her Government had issued a foreign policy statement declaring the protection of the rights of

children as one of Canada's major objectives. In addition, the Government had decided to increase to 25 per cent the share of development assistance projects devoted to meeting fundamental needs, including basic health care, education, family planning and nutrition. The Government had been making a special effort to maintain an appropriate level of financing for children and young people. Previously, the proportion devoted to basic needs had been 20 per cent; consequently, Canada's goal of 25 per cent went beyond the level proposed by UNICEF.

21. Her Government had also implemented a Can$ 16 million partnership fund for domestic activities to be carried out in collaboration with NGOs, universities and other institutions, thus giving life to the Convention through projects for children and young people. It was hoped that the fund would help young people in self-expression and would encourage them to participate actively in the design and implementation of projects that would have an impact on their communities and on the country as a whole.

22. Another initiative by the Canadian Agency for International Development had been to promote the incorporation of the rights of the child within general human rights policy guidelines, thereby strengthening the cause of children. Since the beginning of 1995 a model on the rights of children had been added to the training programme for personnel in the Agency for International Development. To her knowledge, there had not been a review of programming for children and young people through the Agency, but that point would be taken into account in the new performance evaluation system.

23. Mrs. BADRAN pointed out that in Canada the family, as an institution, had undergone drastic changes. On the question of missing children, she said that while programmes had been mentioned, there were indications that the problem was only dealt with after the event; she wondered what preventive measures had been introduced and what was the role of social workers. In the area of child abuse, she asked what was being done to help children to defend themselves against abuse.

24. Turning to separation, divorce and the status of single parents, she asked whether there was discrimination against disabled children of separated parents and whether disabled children had been abandoned after their parents had separated. She inquired whether financial assistance to single parents was sufficient and whether there were programmes which provided non-material assistance to address the other problems of single parents, who were in the main young women.

25. An estimated 60 per cent of families with children under 13 years of age required some form of child-care service to enable parents to work. In 1990, only 320,000 licensed child-care spaces had been available to serve a demand of 2.6 million. What plans had the Government made to bridge the gap between the need for care and the spaces available.

26. Miss MASON, referring to the section of the list of issues (CRC/C.9/WP.1) entitled "Family environment and alternative care", noted that Canada's Immigration Act, cited in paragraph 150 of the initial report, defined the "family" as the father and mother and any child who, by reason of age or disability, was mainly dependent on the mother or father for support

(including illegitimate children). Family law appeared to be mostly dealt with by provincial and territorial authorities. However, the Federal Government had jurisdiction over custody and visiting rights where those issues arose in the context of divorce. Given the liberal and open attitude towards children in Canada, what was the legal status of children born in common-law relationships after the break-up of the family unit? Did the same considerations apply in relation to the issues of custody and access as in the case of legitimate children? All the information given by the federal and provincial governments related only to issues of financial and material support. If the laws applied to legitimate children did not apply to children born out of wedlock, did discriminatory practices exist? Were the best interests of illegitimate children guaranteed? Restrictions were in place to guarantee custody of, and access to, legitimate children for non-custodial parents, but how were those questions regulated for illegitimate children? From the documentation available Canada appeared to be a gender-biased society in favour of women. For example, non-custodial parents who refused to pay child support were liable to be the subject of contempt of court proceedings and could be sent to prison. The non-custodial parent was in fact usually the father. However, a custodial parent not allowing access to children for a non-custodial parent was not sent to prison, even if he or she was found guilty of contempt of court. How should the gender-bias charge be viewed in the light of such a situation?

27. Information had already been given on the ongoing review of international assistance programmes. Paragraphs 140-145 of Canada's initial report described a number of programmes instituted with a view to assisting parents. However, had a review been conducted to measure, determine or monitor the progress and success of such programmes in terms of their effects on children's lives? In relation to the Family Violence Initiative mentioned in paragraph 175 of the report, had such violence been significantly reduced in the past three years?

28. Mrs. SANTOS PAIS said she wished to raise the issues of immigration and refugees in relation to the discussion on family environment and alternative care. It appeared from Canadian case law that a situation could arise where non-Canadian parents could be deported from the country and their children remain there. That situation was connected with articles 9 and 10 of the Convention, especially in relation to separation. Under article 9, States parties should ensure that there would be no separation unless it was in the best interests of the child concerned and determined by competent authorities subject to judicial review. Concern had been expressed as to how a child's best interests were taken into consideration when decisions to deport parents were made. Were family values taken into account by decision-makers? Article 9 also referred to the need for judicial proceedings to give to all interested parties the right and opportunity to be heard. It was unclear when and how a child could make his or her views known and with what legal support. Article 12, paragraph 2, established the right of children to be heard in any administrative and judicial proceedings.

29. In cases of deportation where children remained in Canada, they were only able to request family reunification once they had reached the age of 19. How was the Convention applied to those under the age of 18? Article 10 of the Convention encouraged States to consider in a positive, humane and expeditious

manner all requests for family reunification. A target of six months existed for the resolution of such requests. In cases where that did not happen, what means could be used to take account of a child's best interests and to make the process positive, humane and expeditious? Article 10 also stated that when parents were separated from children or vice versa, children should have the right to maintain on a regular basis personal relations and direct contacts with their parents.

30. She expressed surprise at the practice with regard to intercountry adoption, since paragraph 164 of Canada's initial report stated that the involvement of private individuals and organizations in intercountry adoptions was not regulated by law, except in Quebec. It would therefore appear that there was no State control over individuals or organizations acting on a private basis in intercountry adoption proceedings. How could the Canadian authorities ensure that a child's best interests were the paramount consideration when decisions regarding intercountry adoption were taken? What follow-up system was used when a foreign child was adopted by Canadian couples? Was intercountry adoption really a measure of last resort? Canada was working towards ratification of The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. One of the provisions of the Convention related to the need to ensure accreditation for organizations involved in intercountry adoptions. In order to overcome the possible use of children for financial profit or other illegal aims, was a system of accreditation and monitoring in place for cases involving private individuals or organizations? The issue could have a very important impact on foreign children adopted by Canadians or on Canadian children adopted by foreign couples.

31. Ms. LAVIGNE (Canada), replying to the question how Canada educated children to protect themselves from abuse within the family, said that at the federal level electronic media messages had been prepared on radio and television. They were directed at the largest possible share of the young viewing public at times when all members of a family were likely to be watching television or listening to the radio. The message provided children with information on their rights and on the options available to find solutions or assistance. At the provincial level, various programmes for children existed and were implemented mainly through schools. Information on the programmes was to be found in the report. Children were therefore aware of their rights and of the possible choices available to them at the community level for assistance in cases of sexual or other abuse.

32. The law stipulated that children could not be abandoned in cases of disability. Such practices might actually occur but legislation existed to counter them. In the past few decades the situation of disabled people had become a central issue in Canadian society, and a series of promotion, prevention and information programmes helped such people to exercise their full rights to self-expression and the same existence as that of other people in society.

33. Material, financial and other types of assistance were provided for single-parent families. The majority of such families were headed by women and a number of programmes and projects were in place to help them. A number of housing projects were under way to help women in difficult economic

circumstances to gain access to adequate housing for themselves and their children. Furthermore, a number of social services existed, mostly at the territorial and provincial levels. They provided single-parent families with child-care services and psychological help. Programmes to reduce violence at home had also been introduced. Their implementation was beneficial in the medium and long terms since they provided information and strengthened public awareness and individual capacity to cope with different situations. It was difficult to assess the effect of such programmes in the short term. It was hoped that they would have a short-term impact and, as with all federal public programmes, they would subsequently be evaluated.

34. Mr. SMITH (Canada) said that his Government recognized the importance of child-care provision, which had been placed under the responsibility of provincial governments. In 1973 there had been about 30,000 child-care places licensed by provincial governments. In 1993, the figure had risen to 362,000 places. About 15 per cent of the total number of places available were provided by licensing arrangements. The remainder were through informal arrangements, for example the family and home care. About Can$ 700 million a year were provided by the Federal Government to support child care, including transfers to provinces. The money was currently provided through the Canada Assistance Plan and would in the future come from the Canada Health and Social Transfer, in the amount of about Can$ 300 million a year. The sum included a child-care expense deduction for low-income parents allowing them to reduce their federal income tax. Also, parents participating in federal sponsored training programmes received a dependant-care allowance, costing about Can$ 90 million per year. In addition, the Department of Indian and Northern Affairs funded some 250 places on reserves, costing about Can$ 9 million a year. In addition to federal government spending to support child care, the provinces provided about Can$ 1.1 billion a year through subsidies to parents and assistance for child-care arrangements. The Canadian Government had recognized in various documents its commitment to expanding quality child care throughout the country. Provinces were currently being invited to participate in discussions, as a result of which the Federal Government expected to devote additional resources to support for the expansion of child-care places in the provinces. The discussions had not ended and it was not yet clear how much funding would be provided to finance the new arrangements. Can$ 720 million had originally been set aside by the Federal Government, but the exact figure depended on provincial contributions.

35. Progress had also been made in two other areas. Can$ 72 million had been designated for the forthcoming three-year period to develop child-care places in First Nations and Inuit communities. The spending would create about 6,000 new places in those communities and, combined with existing expenditure, would give a number of places equivalent to the figure for Canada as a whole. Action was under way in a working group with First Nations and Inuit peoples to finalize support funding for transfer arrangements. Also, Can$ 18 million had been committed to a research and development fund entitled "Child Care Visions". The fund would facilitate research into and development of the evaluation of best practices and models in the area of child care.

36. Ms. McKENZIE (Canada) said that her country was among the 20 countries that had signed The Hague Convention, which sought to establish a cooperative framework between the countries of origin of children put up for adoption and

countries receiving those children. The cooperation would ensure that children's best interests were safeguarded in intercountry adoptions. Canada was promoting the early ratification of that Convention. For it to ratify the Convention, provinces must enact the appropriate legislation. Prince Edward Island had already done so in 1994. Consultations were proceeding to encourage other provinces to follow suit. In Canadian law there was no set definition of the term "family", which was not usually used in statutes. It was usually replaced by a formula such as "the benefit is provided to every individual and his/her dependants (including children born out of wedlock)". Some statutes, for example the Immigration Act, did in fact use the term "family".

37. As stated in paragraph 374 of its initial report, the Government of Canada recognized that there were many articles of the Convention relevant to the situation of street children - for example, articles 19 (protection of abuse by those having care), 26 (social security), 28 to 29 (education), 32 to 34 (economic and sexual exploitation and drug abuse), 40 (penal law) and 39 (recovery and reintegration). Paragraph 374 had served as the basis for consultations with Aboriginal groups, which were very concerned about the number of Aboriginal street children. It would therefore be useful to look at the information provided on the above articles in order to understand the measures adopted to reduce the number of street children. For example, real progress had been made in the education of Aboriginal children. Also, information was provided under article 39 on rehabilitation measures, under article 26 on the eligibility of children for social security and under article 19 on abuse.

38. THE CHAIRPERSON reiterated the usefulness of the dialogue in progress and of the guidelines issued by members of the Committee to help States parties in providing relevant and pragmatic information. Reference had been made to many legislative and administrative measures. However, it was the concern of the Committee to ensure that such measures had an impact on children's lives in the respective States parties.

39. Mrs. SANTOS PAIS repeated her question how the monitoring and supervision of private individuals and organizations involved in intercountry adoption could be guaranteed. As stated in paragraph 164 of Canada's initial report, such individuals and organizations were in most cases not subject to regulations. How did they take into account children's best interests? The content of article 21 of The Hague Convention was clear, but she requested further information on immigration and refugees.

40. Miss MASON repeated her request for supplementary information on the legal status of children born out of wedlock, with particular regard to the custody and visiting rights of non-custodial parents. Did the Federal Government have a mandate similar to that which it possessed for children born of divorced parents? If such a mandate did not exist, were there subsequent discriminatory practices? What would the rationale be for excluding such children from a federal mandate? A response was also requested concerning the criticism about the legal and societal bias in favour of women, especially with regard to custody. As to non-payment of child support by a non-custodial parent, why did that not result in a prison sentence being handed down, even in cases of contempt of court? A clear disparity existed.

41. Mr. SPLINTER (Canada) said that further information on issues linked to those under discussion would be provided in due course.

42. Mr. DESLAURIERS (Canada) said that in Quebec illegitimate children had the same rights and obligations as all other children. For a number of years no distinction of any kind had been made between legitimate and illegitimate children. All children were entitled to parental support, irrespective of their status or situation. In response to Miss Mason's question, he said it was necessary for the information available to be checked, but part of his current reply did address some of her concerns.

43. Miss MASON repeated her question concerning the disparity in treatment of legitimate and illegitimate children. For legitimate children of divorced parents, custody, visiting rights and access were regulated at the federal level. However, what was the situation with regard to illegitimate children? Were they dealt with at the provincial and territorial levels or regulated by the Divorce Act at the federal level? If such children were unable to invoke federal legislation, discrimination might well result.

44. Mr. SPLINTER (Canada) said that the situation highlighted by Miss Mason was a historical anomaly. At the time the Canadian Constitution had been introduced in 1867, the solemnization of marriage had been a federal matter for legislative purposes, whereas civil rights had come under provincial jurisdiction. Since that time Canadian society had evolved considerably. In 1867 illegitimate children had not been a public policy concern, but they were very much a fact of life in modern Canada. The Divorce Act dealt with children born in marriage simply because federal jurisdiction had to address marriage and therefore divorce. It was important to focus not on the level of action, but on the action taken. The treatment of the children concerned was similar, irrespective of whether the situation of illegitimate children was regulated at the provincial level or whether that of children in divorce cases came under federal jurisdiction.

45. Ms. McKENZIE (Canada) said that the Divorce Act did not apply to illegitimate children; the issues of custody and access to them were governed by provincial law. Other federal legislation was relevant to illegitimate children as it benefited both parents and the children themselves. Information on any discriminatory practices which might exist regarding the access rights of fathers to children would be provided at a later date. The express purpose of the Divorce Act was to achieve equal non-discriminatory treatment for both parents.

46. Ms. RODNEY (Canada) said that she wished to give an account of Canadian policy on immigration and refugee matters, while at the same time including replies to questions concerning refugee children, children claiming refugee status and asylum-seeking children.

47. International law did not provide an express right to family reunification nor did the Convention recognize family reunification as a right. Similarly, the Canadian Charter of Rights and Freedoms did not ensure the right to family reunification. However, the 1994 Declaration of the International Conference on Population and Development stated that, consistent with article 10 of the Convention on the Rights of the Child and all other

relevant human rights instruments, all Governments, particularly those of receiving countries, must recognize the vital importance of family reunification and promote its integration into their national legislation in order to ensure the protection of the unity of the family of documented migrants.

48. The Canadian Immigration Act ensured that the application of a child or his or her parent to enter Canada for purposes of family reunification was dealt with in a positive, humane and expeditious manner. One of the objectives of the Act was to facilitate the reunification of Canadian citizens and permanent residents. The 1995 Immigration Plan gave priority to the reunification of immediate family members and a large proportion of immigration into Canada consisted of cases of family reunification.

49. Family reunification was achieved in a variety of ways. Individuals emigrating to Canada applied on behalf of themselves and their dependants, including dependant children. If they all met the requirements of the Immigration Act, they would receive immigration visas. If one family member was inadmissible, for example, on medical grounds, exceptional measures were available to allow the members to arrive in Canada together as a family unit. Where Canadian citizens or permanent residents wished to bring close family members to Canada as permanent residents, they could do so by making a family-class application. The admission of the persons sponsored depended on the degree of family relationship and the undertaking given by the sponsor. If the case was not routine and there were medical or security problems, methods were available to enable the family to be reunited quickly. For example, applicants in Canada could submit information showing why it would be a hardship to leave Canada and apply for a visa in a normal way from outside Canada. In that connection, the applicant might request that information relating to the separation of family members should be considered. The information provided would be considered by the immigration officer. Failure to consider it submitted was a reviewable error, as was failure to take account of the best interests of the children involved. The positive factors brought forward by the applicants were assessed in the light of the reported hardship of having to apply for permanent residence from outside Canada.

50. UNHCR regarded third-country resettlement as the preferred protection solution for only a very small proportion of the world's refugees. Of an estimated 23 million refugees worldwide, some 80 per cent were women and children. UNHCR had requested resettlement places for only a few thousand. For those individuals who did require resettlement in a third country, Canada was only one of a handful of countries that operated a major refugee resettlement programme. The 1995 resettlement programme was committed to resettling 7,300 government-assisted refugees and it was expected that thousands more would come to Canada under private sponsorship.

51. Cases of asylum-seekers who had arrived in Canada without being selected or applying for refugee status were examined within Canada by the Immigration and Refugee Board (IRB). UNHCR had consistently praised the Canadian refugee determination system as implemented by the IRB and noted that Canada had the world's highest recognition rate for refugees covered by the Convention relating to the Status of Refugees. Some children arrived in Canada without their parents and claimed to be Convention refugees. In such cases efforts

were made to locate relatives. It was Canadian practice to ensure that, as well as legal counsel, the child had appropriate representation to ensure respect for his best interests. Where no parent or guardian was available, that representation was secured at the Canadian Government's expense. Members of the IRB were already familiar with the Convention on the Rights of the Child. In one particular case, members had found a child to be a Convention refugee on the basis of the violation of his basic rights as defined in the Convention on the Rights of the Child.

52. With regard to protection against discrimination, Canada ensured that the benefits granted to Canadian children were also given to children seeking refugee status. Children who were refugees or refugee claimants could attend school and had access to provincial social assistance and medical care. Where a provincial government did not grant refugee claimants access to health services, the Federal Government assumed responsibility for ensuring that they received the necessary care. Minors could be detained by immigration officers if the officials were of the opinion that there were reasonable grounds to believe that that person was a danger to the public or would not appear for the inquiry or for removal from Canada. However, unaccompanied minors were very rarely detained. In the rare cases where detention was warranted, minors were kept apart from adults. In that connection, it should be noted that the accommodation used were usually a hotel.

53. Any asylum-seeker, including a child, could invoke his constitutional rights in court in the same manner as a Canadian citizen. On the question whether a child's opinion was taken into consideration in deportation hearings, the issue related to the immigration status of the person being deported. If the child had some evidence that would assist in the determination, such evidence was admissible. With regard to the interests of the individual and the interests of the State, while the individual had the right to protection, the State had the right to control its borders. Family considerations were given a significant place in decision-making. For example, even serious criminality had not resulted in a decision in favour of the State. It was important to take the context into account in decision-making in such cases and to realize that decisions were subject to legal recourse.

54. During the International Conference on Population and Development, countries of immigration, including Canada, the United States of America and Australia, had established that there was no internationally recognized right to family reunification and that the recognition of such a right would be inconsistent with, and unduly restrict, the ability to regulate immigration. However, Canada had established the principle of family reunification as a main aspect of its immigration programme. It nevertheless believed it important to avoid encouraging families to use children as a means of gaining admission to Canada by sending them there either alone or in the company of couriers, thus separating them from their families and placing them at risk. In an immigrant-receiving country such as Canada, where some 200,000 persons were granted permanent resident status every year, it would be impossible to control entry if the requirement to request that status from outside Canada was completely disregarded. However, the Immigration Act authorized the application of humanitarian and compassionate grounds. The Minister of Citizenship and Immigration could exempt an individual from complying with

certain regulations or otherwise facilitate that person's admission to Canada. The applicant must demonstrate hardship or other compelling reasons why he could not apply for and be granted a visa from outside Canada.

55. The best interests of the child were not only relevant but must be taken into account. One issue of concern discussed in the United Nations working group on the draft convention in December 1988 had been whether the provision in article 9 concerning non-separation from parents would require States to amend their immigration laws to avoid the separation of children from their parents. The working group had requested that a statement should be included in the report on its deliberations to indicate that article 10 on family reunification was the governing matter on that issue. It had been the working group's understanding that article 10 was not intended to affect the general right of States to establish and regulate their respective immigration laws in accordance with their international obligations. To cite a parallel example, she said it had been found that spouses did have the right to live together as an aspect of the right to found a family. However, that did not give them a right to choose the country.

56. The CHAIRPERSON recalled that a member of the Committee had raised the question whether the Government had a follow-up procedure which would enable it to ascertain the situation with regard to adoptions arranged by private organizations, and in particular their compliance with the relevant regulations.

57. Mr. SPLINTER (Canada) said that given the complexity of the question, his delegation would prefer to reply at a later stage to ensure that it covered all the points raised.

58. The CHAIRPERSON invited the Committee to consider the section of the list of issues relating to basic health and welfare.

59. Mr. MOMBESHORA said that he would welcome information concerning the budgetary allocation for child-care facilities in the Indian community.

60. Mrs. KARP asked what was the status of children and applicants for refugee status during the period when their request was being considered and whether they were entitled to health care.

61. Mrs. BADRAN said that it was alarming to note the increase in the number of child suicides, particularly among minority groups. Furthermore, according to a national survey, a high percentage of children felt that they were living in difficult conditions. She would welcome an explanation from the delegation, particularly in view of the positive developments to which reference had been made.

62. Mr. HAMMARBERG said that according to available information, there might be groups of non-residential citizens in Canada that were not entitled to free health care. He would welcome clarification on that point. In considering the situation in other countries, and in particular the Scandinavian countries, the Committee had come to the conclusion that the country where the child was living was responsible for providing health care and education.

63. Mrs. SANTOS PAIS pointed out that under article 2 of the Convention every child under the jurisdiction of the State party must enjoy the rights recognized in the Convention. Article 22 referred to the need for children who were refugees or asylum-seekers to enjoy all applicable rights.

64. Ms. RODNEY (Canada) said that no child in Canada would be put at risk through lack of action to help him. Essential health services for children included the provision of glasses and basic dental care. All children who were refugee claimants or were found to be refugees could attend school in the same way as Canadian children.

65. Ms. LAVIGNE (Canada), replying to questions about children's health programmes, said that she did not yet have precise data on health indicators for children of different age groups in the various provinces but would endeavour to obtain such data for the Committee as soon as possible. Similarly, she did not have precise details of budget allocations for the most vulnerable groups, but would transmit such data to the Committee at the first opportunity.

66. With regard to children's mental health, she recalled that the Canadian authorities attached great importance to that question and had developed various programmes at the federal and provincial levels. At the federal level, the children's mental health strategies programme aimed to provide effective preventive measures for children up to the age of six years and involved close collaboration with the provinces and territories and with certain NGOs, such as the Canadian Mental Health Association. Its aim was to formulate guidelines and information material for families and children themselves to equip them better to cope with the situations in which they lived.

67. Suicide among young people was a problem of particular concern, in Canada as in other societies. Children nowadays were subjected to greater stress than ever before and were very sensitive to it. The mental health strategies and services which were available at the provincial and territorial levels aimed to provide appropriate solutions and a number of specific programmes had been set up, including programmes involving schools, to help young people cope with stress.

68. Ms. WHITAKER (Canada) recalled that while certain indicators, such as those for infant and child mortality, remained higher overall among indigenous communities than for the population as a whole, they had fallen dramatically in recent decades. One important factor which needed to be taken into account was that many indigenous communities were small and situated in remote areas, which resulted in poorer access to medical services than that enjoyed by most Canadians. Under recent health programme transfer initiatives, First Nations were increasingly taking over responsibility for the design and delivery of health care to their peoples. Fifty-three transfer agreements involving 126 First Nations had been signed and more were planned. A number of other initiatives were tackling the various factors which affected the health of Aboriginal infants and children. They included the Prenatal Nutrition Programme, announced in July 1994, which aimed to provide food supplements, as well as nutritional counselling and education, to pregnant women, including women in First Nations and Inuit communities, whose babies might be at risk

from poor nutrition. In addition, since 1992, Health and Welfare Canada had spent Can$ 1.3 million on specific projects relating to the effects of alcohol on the foetus. Some of those projects related specifically to First Nations. The report had also referred to the Inuit Healthy Babies Framework, which had now been completed and was being printed in two Inuit languages.

69. The suicide rate among Aboriginal children and young people, while still higher than the national average, appeared to have declined over recent years. However, it was important to bear in mind that available suicide statistics might not always be totally reliable. A report by the Royal Commission on Aboriginal Peoples entitled "Choosing Life", released in February 1995, suggested that reported figures of suicide among indigenous peoples did not necessarily reflect the true incidence of suicide. It further suggested that general figures concealed wide variations among individual communities, some Aboriginal communities having higher suicide rates than average, while in others the suicide rate appeared to be lower.

70. There were no recent reports or studies on the problem of Aboriginal suicide. However, several programmes had been set up with components which specifically addressed the problem of suicide among young people in Aboriginal communities. Those programmes involved the full participation of the communities concerned, since such participation helped prevention. The programmes included the Family Violence Initiative announced in 1991, which aimed to prevent child abuse in indigenous families and included an Aboriginal initiative on the prevention of violence. Another programme entitled Building Healthy Communities had been announced in September 1994 and comprised a new health-care strategy for First Nations and Inuit communities. Under another recent initiative, which had been mentioned in Canada's statement, solvent-abuse treatment centres were being set up in the First Nations and Inuit communities. In general, despite some persistent problems, the overall health situation had improved significantly thanks to efforts to target assistance efficiently and collaborate with the communities concerned.

71. Mrs. KARP, referring to paragraph 178 of the report, noted the increasing delays before child-abuse cases were brought before courts. Was anything done to help the victims before a case came to court or did any counselling and assistance given to the victim depend on the results of the court case? With regard to the specific problem of helping victims in incest cases, were particular difficulties encountered in Aboriginal communities and were the prevailing attitudes in those communities any different from those found in society as a whole?

72. Mr. MOMBESHORA asked whether, in view of the obvious difficulties of getting trained staff to work in the remoter parts of Canada, special efforts were being made to provide training in areas such as medicine and nursing for local people, who were likely to have a better understanding of local conditions.

73. Mrs. BADRAN said that she was also concerned about environmental health. The report showed that some minority communities lacked adequate sewage disposal systems and fresh water supplies. Such problems could obviously result in a general deterioration in the health of people in those communities.

74. Ms. WHITAKER (Canada), referring to information given to the Committee during a previous meeting, recalled that thanks to a number of initiatives the number of Indian and Inuit children graduating from high school had greatly increased, as had the number of students going on to tertiary education. Special tuition and help were available to students who might not otherwise graduate to help them to do so and to prepare them for tertiary education.

75. The vocational training of Aboriginal peoples was another area to which the Canadian authorities attached great importance. Further efforts would be needed to increase the number of professionals such as doctors coming from the Aboriginal communities. With new self-government arrangements, the training of local people as effective administrators was also regarded as a priority in the creation of stable and competent local administrations staffed by local people.

76. Ms. LAVIGNE (Canada), replying to the question about help for victims of child abuse, said that a range of services were on offer to victims through the provincial agencies responsible for providing assistance and protection to children and young people. That assistance, in the form of counselling and medical and legal aid, was available before the case in question came to court. In cases of suspected violence or abuse within a family, a child could be removed from the family before the case came to court if such action was deemed to be in the best interests of the child.

77. The CHAIRPERSON invited the Committee to consider the sections the list of issues relating to education, leisure and cultural activities, and special protection measures.

78. Mr. HAMMARBERG asked whether, in view of the potentially serious effects of expulsion from school on a child's future, procedures existed to ensure that the views of a child threatened with expulsion would be taken into consideration, in accordance with the terms of, for example, article 12 of the Convention.

79. Mrs. KARP referred to two recent Federal Court of Appeal rulings on immigration cases which might have serious implications in other areas. In those cases, the Court had found that the right of a child not to be separated from his parents was not related to the child's personal security within the meaning of section 7 of the Charter of Rights and Freedoms and that a child had no legal interest in any decision by the authorities relating to his parents. It had therefore decided that the separation of a child citizen from its parents arising from a deportation order did not come under the Charter. The Court had also ruled that Canada's international obligations under the Convention were not enforceable under Canadian domestic law unless those obligations were specifically adopted as part of domestic law, and that immigration officials had not acted in any way inconsistent with Canada's international obligations or with the provisions of the Charter in exercising their discretion.

80. In the light of the Court's rulings she wished to know what action Canada proposed to take to ensure that judges would in future take article 9 of the Convention into consideration when ruling on cases brought under section 7 of the Charter. Were there any plans to incorporate article 9 into the

Immigration Act or Citizenship Act, with a view to allowing a child concerned to participate in any proceedings arising from moves to deport his parents? And what were the terms of eligibility of children and young people for legal advice in civil cases, including immigration cases, and in criminal cases?

81. Miss MASON, referring to question 24 on the list of issues concerning possible reasons for the transfer of children from juvenile courts to adult courts, said that the Canadian delegation's response had clarified the legal situation, which was that indictable offences committed by young persons came under the Criminal Code rather than the Young Offenders Act and the offender could be imprisoned rather than detained in a juvenile facility. She noted that under Canadian law such a transfer to an adult court could happen where the offender was 14 years or older at the time of the offence, although according to information provided by the Canadian authorities, the young person concerned was usually 18 by the time the case came before the Court. She wondered what reasons there could be for such delays and whether they could be in the interests of the young people concerned. Given the greater restrictions on correspondence or visits from family members in adult units, she doubted that young offenders were likely to benefit from detention in such units or that such detention could be consistent with the terms of, for example, article 39 of the Convention, which dealt with rehabilitative treatment. She also wished to know whether, as seemed to be the case, a disproportionate number of young people from indigenous communities or other minorities were affected by those provisions.

82. Mrs. BADRAN asked if, in the case of expulsion from school, there were proper follow-up procedures, and indeed any effective measures for averting expulsion where at all possible.

83. With regard to the figures given for disabilities, she noted that the overall average was 7.2 per cent, with a somewhat lower figure for the age-range 0-4 years and a rate of up to 9 per cent for school-age children. Did the lower figure for the youngest children reflect an inability by families to detect disabilities at an early stage? If that were the case, a special programme might be needed to assist parents in the early detection of disabilities.

84. Mrs. SANTOS PAIS, referring again to the question of immigration and refugees, noted that the Canadian Government in its policy in that area had placed great emphasis on the fact that international law did not recognize a right to family reunification. However, that must be seen in the context of the obligations of States parties under article 9 of the Convention, which stated that children should not be separated from their parents unless that was in the best interests of the child. Was it the case in Canada that such decisions were always made, in accordance with article 9, by competent authorities subject to judicial review?

85. She was also concerned that, where parents and children were separated, efforts should be made, as required under the terms of article 10, paragraph 1, of the Convention, to ensure that close contacts were maintained between parents and children living in different countries. Canada's policy in that area did not appear to be entirely clear.

86. Recalling what she had said earlier regarding the need in deportation procedures to take into account the views of any children concerned, she noted that arrangements made to detain children in immigration or asylum cases might not fully take into account their particular needs even when they were detained in comfortable surroundings such as hotels. Such detention was still a deprivation of liberty under article 37 (b) of the Convention, according to which such a measure should only be a last resort and for the shortest possible period of time. According to some reports, children had been detained in Canada for a year or more. What measures were taken to ensure that children in such situations, who were likely to be bewildered and traumatized and unlikely to understand the language, were treated as individuals with special needs and given every possible assistance to promote their normal development?

87. Under article 37 (d) of the Convention, any child deprived of his or her liberty should have "the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority". It was not entirely clear that arrangements in Canada, where such decisions were made by the immigration authorities, met those criteria. Clarification was also needed on whether children in such situations enjoyed the right of habeas corpus, which was a crucial legal safeguard.

88. Mr. HAMMARBERG said that, while the overall situation with regard to immigration procedure in Canada appeared to be satisfactory, some improvements might be possible. For example, the Committee took very seriously the obligations of States parties under article 37 (b) concerning the deprivation of liberty. Such an experience was often extremely traumatic to children in a foreign environment, even when they were detained in comfortable surroundings. Were alternative measures being sought? Similarly, it was important, when interviewing children in such situations, to create a relaxed atmosphere, and for that trained and sensitive interviewers were needed.

89. With regard to the problem of family reunification, it was his understanding that a "head tax" was paid by people entering the country. Were there means available for ensuring that no delays were caused by that arrangement in urgent cases of family reunification? In such cases was due account taken of the fact that members of the extended family, not simply of the "core" family, might be very important to a child's welfare?

90. Recalling that under Canadian law a child born in Canada, even of persons without any right of abode in the country, automatically became a Canadian citizen, he wondered how exactly the Canadian authorities considered the problems which arose where the child's parents were found to have no good reasons for asylum. Another question concerned the right of access to federal complaints procedures. The Ministry of Immigration appeared to have discretionary powers to approve or refuse access to such procedures. Was that the case and, if so, did it not imply a restriction of the right of asylum-seekers to make use of complaints procedures?

91. Lastly, in view of the devastating effects of anti-personnel mines, particularly on children, did Canada plan to enact any specific legislation outlawing the production and sale of such mines? And did Canada intend to ratify ILO Convention No. 138 on the minimum age of employment?

92. The CHAIRPERSON invited the delegation of Canada to reflect on the additional questions which had been put by the Committee and to give its answers at the next meeting, at which the Committee would also present its concluding observations.

The meeting rose at 1 p.m.